

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JESSE TOMAS CRUZ : CIVIL ACTION
Plaintiff :
: NO. 18-3743
v. :
: ANDREW SAUL, Commissioner of the :
Social Security Administration :
Defendant :
:

O R D E R

AND NOW, this 27th day of March 2020, upon consideration of the *Report and Recommendation* (the “R&R”) issued on February 11, 2020 by the Honorable Henry S. Perkin, United States Magistrate Judge, [ECF 21], and the objections to the R&R filed by Defendant Andrew Saul, Commissioner of the Social Security Administration (the “Commissioner”), [ECF 24], it is hereby **ORDERED** that:

1. the Commissioner’s objections are **OVERRULED**;
2. the *Report and Recommendation* is **APPROVED** and **ADOPTED**; and
3. the case is **REMANDED** to the Commissioner so that it can be reassigned to a properly-appointed administrative law judge (“ALJ”), other than the ALJ who originally heard Plaintiff’s case, for a new hearing and/or determination.¹

BY THE COURT:

/s/ Nitza I. Quiñones Alejandro
NITZA I. QUIÑONES ALEJANDRO
Judge, United States District Court

¹ In the R&R, the Magistrate Judge recommended that this matter be remanded to the Commissioner for reassignment to a properly-appointed ALJ, consistent with the Supreme Court’s decision in *Lucia v. S.E.C.*, 138 S. Ct. 2044 (2018), and the recent decision of the United States Court of Appeals for the Third Circuit (the “Third Circuit”) in *Cirko v. Comm’r of Soc. Sec.*, 948 F.3d 148 (3d Cir. 2020). The Commissioner filed timely objections to the R&R in which he concedes that this “Court must follow *Cirko* as binding precedent,” repeats previously-made arguments in order to preserve them for further review, and requests that this Court hold its decision until the Third Circuit rules on the pending rehearing petition in *Cirko*. On March 26, 2020, the Third Circuit denied the pending motion for rehearing. As such, there is no basis to stay this matter. Accordingly, in light of the Third Circuit’s decision in *Cirko*, the Commissioner’s objections are overruled, the R&R is approved and adopted, and this matter is remanded to the Commissioner for reassignment to a properly-appointed ALJ and a new hearing and/or determination.